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COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS FOR THE SUPPLY OF SPARE PARTS FOR AGRICULTURAL MACHINERY*

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The purpose of this document is to draw together the various types and versions of the clauses contained in drafts and precedents of the contract under consideration. It is essentially a research document, drawing on existing material and not seeking to furnish any new ideas on the possible approaches to issues in contractual relations.

The headings of the contract clauses dealt with in this document appear in the middle column of the "Contents" on the next page. The clause numbers are given in the right hand column. Reference is then made in the left hand column to the "Status" of the clauses considered. The letters "N", "R" and "O" stand for "Necessary", "Recommended" and "Optional" respectively. This classification indicates the degree of importance attached to the inclusion in the contract of a clause dealing with the issue raised in the corresponding clause heading. Thus, it is felt, a clause whose heading is assigned the status "Necessary" should appear in some form in the contract, even if it is not included in terms of any of the examples provided in this document.

On the page following the "Contents" there is an example of the preamble sometimes included in contracts. The recitals contained in a preamble serve to describe, if very briefly, the setting and conditions in which the agreement between the parties has been concluded. Under legal systems which take preambles into account, these can be of assistance in interpreting the clauses of contracts should a dispute later arise. Some legal systems, however, ignore the recitals contained in the preamble to a contract.

The major part of this document is given over to samples of the clauses which can be included in the contract under consideration. The examples appear in tabulated form. In some instances only one example is given of the possible terms of a clause dealing with the issue raised in the clause heading (left hand column of the table), in others two or three examples are provided. The fifth column, headed "Additions", contains extra material which supplements rather than replaces the examples given of a particular clause. The last column of the tables indicates, in abbreviated form, the sources from which the examples and additions have been generally drawn. The sources referred to above are set out in full in the last page of this document.

As recommended by the Second Consultation on the Agricultural Machinery Industry, the sources drawn from include the documentation considered by that Consultation, the views expressed on it, other relevant national and international material, the views of the participants in the Consultation and other interested parties and the experience gained by the Secretariat in work on contractual agreements.

Clause	Heading	Status
1	Definitions	R
2	Entry into Force	R
3	Substantive Transaction	N
4	Scope of Services	N
5	Rights and Duties of Partner	N
6	Obligations of the Client	N
7	Personnel	N
8	Partner's Remuneration	N
9	Performance Security	O
10	Warranties	N
11	Failure to Perform	N
12	Limitation of Partner's Liability	R
13	Force Majeure	N
14	Changed Circumstances	R
15	Insurance	R
16	Assignment	O
17	Sub-Contracting	O
18	Secrecy	O
19	Additional Provision for Termination and Suspension	O
20	End of Contract	R
21	Status	O
22	Language	R
23	Applicable Standards	R
24	Notices	R
25	Settlement of Disputes	R
26	Applicable Law	N

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THIS AGREEMENT is made BETWEEN of (hereinafter called "the client") and of (hereinafter called "the partner") this day of .

WHEREAS:

1. The client has erected a facility for the assembly and manufacture of agricultural machinery and for the supply of services ancillary thereto in his/her own country.

2. The partner has, for a considerable number of years, managed and operated factories for the assembly and manufacture of machinery and

(a) possesses substantial valuable knowledge of a specialized nature relating to processes, methods and techniques in the operation and management of factories and the provision of ancillary services and continues to acquire information, skills, expertise and reputation relative to the management and operation of factories;

(b) has acquired substantial knowledge, skill and expertise in the efficient and proper management and operation of factories and, in particular, in the most efficient and optimum methods of initiating and establishing the management and operations of factories and activities ancillary thereto;

(c) has acquired expertise in the training of personnel for the management and operation of factories and activities ancillary thereto;

3. The client desires to acquire and have the advantage of all the partner's said and future technical knowledge, information, expertise, techniques and skills in the operation and management of a factory and the provision of ancillary services;

4. The partner is mindful that the client has available to him/her in his/her own country a far lesser tradition in industry than has the partner and that the consummation of this agreement is intended to aid and be in the interests of the industrial and economic development of the client's country.

Now, in CONSIDERATION of the premises and of the mutual convenants and conditions herein contained, the parties hereto have agreed and do by these presents agree as follows:

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	REMARKS	SOURCE
DEFINITIONS R	1. For the purposes of this contract the following terms shall be interpreted thus: -"the business" - the client's trade or proposed trade in the assembly and manufacture, sale and distribution of agricultural machinery and spare parts carried on or proposed to be carried on at the client's premises at - "contract" - this agreement including all the appendices hereto and all the documents referred to in this contract. - "plant" - all the equipment, machinery, materials and other apparatus which is used in the manufacturing processes of the client's business. -"works" - the client's factory premises at including all the plant attached thereto.				Ex.I 1 Trade/GE.1/R.3
ENTRY INTO FORCE R	2. This contract shall enter into force on its signature by the parties, or where signed separately, on the signature of the last subscribing party.	2. This contract shall enter into force on the day of			
SUBSTANTIVE TRANSACTION N	3. Subject to the terms of this contract the partner shall, for the periods herinafter specified, put into operation, manage, direct and supervise, as the case may be, the manufacturing assembly, sales and service operations of the buisness, shall render technical assistance to the client and shall train the client's employees in consideration of the payment to him/her by the client of the remuneration hereinafter set forth.				Ex.I 3 ID/WG.400/2
SCOPE OF SERVICES N	4.1. For a period of ... months from the ... day of ... (OR: from the entry into force of this contract) the partner shall be responsible for the putting into efficient operation and management of the business. His/her duties will include, inter alia: - the planning, organizing and commencement production - testing of all parts of the works - advising the client of the remidial action, if any, including the invoking of guarantees, to be taken in respect of any defects or non-conformity with the contracts under which they were supplied in any part of the works				Ex.I 4 Trade/GE.1/R.3 + ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- establishing and putting into operation of modern management systems and procedures - planning the purchase of raw materials, semi-manufactures and other goods - investigating sources of supply for raw materials, semi-manufactures and other goods, in particular, the possibility of supplies being obtained in the client's country - managing and directing the operations - planning processes - planning and organizing the optimal use of equipment in the production process - planning and organizing the personnel requirements at all levels - establishing operating procedures for periodic optimization, product quality control and the efficient control of the consumption of fuel and utilities - drawing up operations programs, directives and instructions - checking and recommending of any modifications required for the more efficient operation of the works - ensuring that all the technical information and know how in respect of the works is transferred by the suppliers thereof to the client before the termination of the said period of months. 2. Within weeks of the termination of the period specified at sub-paragraph 1 the partner, in consultation with the client, shall prepare a works' organization study for the client. The works' orgnization study shall indicate the means by which the production capacity of the works can be maximized economically and the optimal, most efficient means of managing the works by the adaption to local conditons of the best engineering and industrial management standards. The said study shall contain a detailed description of all the organizational functions of the works, define the relationships between the various departments and services and give guidelines, inter alia , on the following matters: - Administration and Finance; including general management, organization, preparation and management of budgets, and accounting (general accounting, cost accounting and management of expenditure and income).				

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- Technical questions; including a study of the products to be manufactured and production programs, industrial engineering, adaption and modification of the products to be manufactured, documentation, methods, production timetables and measurement of working time and quality control. - Personnel; including recruitment, training, security and general services. - Production; including scheduling, managment of stocks, planning, dispatch and transport, procurement, supply, subcontracting, maintenance and repair and management of stocks of tools and equipment and of spare and replacment parts. - Matters relating to delivery, after-sales service, follow-up and adaption of products to user's requirements. 3. For a period of ... months commencing on the termination of the period referred to in sub-paragraph 1 hereof the partner shall manage the works on a day-to-day basis but will not be responsible for the overall management of the works. In partiuclar, during the said period the partner will not be responsible for procurement, financial and legal administration, marketing and after-sales service. During the said period, however, the partner shall give the client technical assistance on the following matters arising in the areas of management reserved to the client: - within ... weeks of the commencement of the period specified in this sub-paragraph, the partner shall submit to the client a budget estimating the working capital required for the works, detailing the basis on which the said estimate is made and detailing budgetary information regarding the areas of management and service for which the partner is responsible. - within ... weeks of the commencement of the period specified in this sub-paragraph, the partner shall submit to the client a list of parts and supplies required for production, indicating the quantities and purchase specifications necessary. The said list shall analyse the said spare parts as to those which are not available in the client's country, those which can only be purchased from one source or through one source, those available on the open market and those available in the client's country. The partner will update the said list and analyses.				

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- the partner will make recommendations to the client as regards the procurement of parts and supplies in accordance with the client's policy of purchasing as many parts and supplies as possible from sources within his/her own country, or where they are not there available, from sources in countries which have trade agreements with the client's country provided that the partner's recommendations are made taking into account the competitiveness of parts and supplies available from different sources, whether inside or outside the client's country. The partner shall, from time to time as required by the client, review his/her said recommendations in line with the procurement policy here outlined. 4. During the periods specified at sub-paragraphs 1 and 2 hereof the partner shall train the client's employees as set out in Annex of this contract. The object of the said training is to enable the client's employees to master all the skills necessary to manage the works efficiently, to maintain and repair the works and to operate the works in the most economical way. The training to be given by the partner to the client's employees will be substantially the same as that received by the partner's own employees engaged in similar areas of work, subject to the specific training needs of individual employees of the client. The said training will be such as will achieve the following targets: (i) At the end of the period specified in sub-paragraph 1 each of the client's employees must be thoroughly familiar with the various aspects of the work, duties and responsibilities to which he/she has been assigned; (ii) At the end of the period specified in sub-paragraph 2 the client's employees must each have obtained sufficient practical experience in the various aspects of the work, duties and responsibilities to which he/she has been assigned and will be properly trained to enable him/her to take over all the work, duties and responsibilities of the post to which he/she has been assigned. A training program and a list of the proposed trainees, their qualifications and the posts in respect of which they are to be trained appear in Appendix ... of this contract.				

RIGHTS AND DUTIES OF THE PARTNER H	5.1. The partner will exercise all reasonable skill, care and diligence in the performance of the services under this contract and shall carry out all his/her responsibilities in accordance with recognized professional/ industrial and/or managerial standards. 2. The partner shall act as a faithful adviser to the client. 3. The partner, his/her employees and sub-contractors, whilst in the country in which the services are to be rendered, shall respect the laws and customs of that country. 4. The remuneration of the partner charged to the client in accordance with this contract shall constitute his/her only remuneration in connection with this contract and neither he/she nor his/her personnel shall accept any trade commission, discount, allowance, indirect payment, benefit or other consideration in connection with in relation to this contract or to the discharge of his/her obligations hereunder. 5. The partner shall not have the benefit, whether directly or indirectly, of any royalty on or of any gratuity or commission in respect of any patented or protected article or process used on or for the purpose of this contract unless it is mutually agreed in writing that he/she may. 6. The partner will provide all the expert technical advice and skills which are normally required for the class of services for which he/she is engaged. Where specialist technical advice or assistance is required, beyond that committed under Clause 4 of this contract, the partner may, with the prior written agreement of the client, arrange for the provision of such services. The client shall be liable to pay for all such services. Notwithstanding the client's liability to pay for such services or his/her written agreement to the provision thereof, the partner shall retain full and unseverable responsibility for all the services which he/she is committed to render under this contract. 7. The partner shall not be the medium of payments made on behalf of the client to contractors and/or suppliers unless specifically so requested to be by the client.				

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	8. The partner shall have the right, subject to the client's approval, which shall not be unreasonably withheld, to publish descriptive articles with or without illustrations, with respect to the services either on his/her own account or in conjunction with other parties concerned.				
	9. Save as hereinbefore provided, the code of ethics/conduct of the partner's association, if any, shall apply to this contract in respect of the partner's professional, industrial and managerial obligations.	In so far as the code of ethics/conduct of the partner's association, if any, enlarges the partner's liability to the client as hereinbefore described, the same shall apply to this contract in respect of all the partner's professional, industrial and managerial obligations.	5.9. The said services shall be carried out in accordance with the standards and specifications particularized in Appendix ... of this contract, in so far as the same are applicable to the said services.		Ex.I+II 5.9 ECE/145 Ex.III 5.9 Trade/GE.1/R.32
OBLIGATIONS OF THE CLIENT N	6. The client shall: - provide all the raw materials, utilities and the tools, equipment, spare parts and personnel specified in Appendix ... of this contract required for the preparation, operation, start-up and testing of the works; - supply the financing in the amount and in the manner specified in Appendix ... of this contract; - furnish all pertinent design and construction data and information available to him to the partner at his own expense and within a reasonable time; - give such assistance as is reasonably required by the partner for the carrying out of his/her obligations under the contract; - organize the transportation of equipment, materials and supplies into his country; - give any decisions required of him/her in such reasonable time so as not to delay or disrupt the performance by the partner of his/her obligations under this contract; - facilitate the speedy granting to the partner and any of his/her personnel and their dependants, in respect of the client's country, of: necessary visas, licences, permits and customs clearance; unobstructed access to all sites and locations involved in the carrying out of the services; medical services, security at the works site and living quarters for the partner's employees and their dependants; the privilege of bringing into the client's country reasonable amounts of foreign currency for the purpose				Ex.I 6 Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE

of the services or the personal use of such employees and of withdrawing any such amounts brought into the country; repatriation of the partner, his/her employees and their dependents in the event of an international crisis; and assistance in the event of unforseen local and national emergencies;
- facilitate the transfer abroad of the remuneration of the partner and the salaries of his/her personnel, taking into account relevant legislation in the client's country.

PERSONNEL N

7.1. The partner shall provide all the skilled personnel required for the proper carrying out of his/her obligations under this contract. Initially, the partner shall provide the skilled personnel qualified for and experienced in the functions listed in Appendix ... of this contract provided, however, that should such skilled personnel be insufficient to enable the partner to fulfill his/her obligations properly or within the time specified therefore the partner shall provide addtional skilled personnel.

2. Should it become necessary to replace any member of the partner's personnel during his/her contracted term, the partner shall arrange forthwith for such replacement with a person of comprable experience. The party requesting the replacement shall be responsible for the financial consequences thereof save in the case that the client has requested the replacement for reasons of misconduct, inability to perform or violation of laws. All such requests for replacement, for whatever reason, must be presented in writing with the particular reason stated.

3. The partner may, from time to time, delegate to a manager any of the powers, authorities, duties or responsibilities vested in him/her. Such a manager shall work under the partner's instructions and shall have the authority required to enable him/her to carry out the duties and responsibilities delegated to him/her and to exercise direct management powers and control over the areas of operation delegated to him/her. All and any such delegations by the partner shall be made in writing and the partner shall furnish the client with copies thereof. The partner shall at all times remain responsible for the acts and omissions of managers to whom he/she has delegated all and any of his/her powers, authorities, duties or responsibilities.

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	4. The client's empolyees assigned to work in the business shall be remunerated by the client. The client's said employees shall not be removed or replaced save by the client acting in consultation with the partner. In all other respects t' client's employees shall be subject tr che administrative direction and su ervision of the partner save as regards tho aspects of the buisness reserved to the lient in the period specified in Clau.s 4 subparagraph 3. Notwithstanding the appointment of the said employees by the client the partner shall retain full and unseverable responsibility for the due performance of his/her obligations hereunder and for the satisfactory completion of the services. The partner accepts liability for the services of the client's employees save as regards those aspects of the business reserved to the client in the period mentioned in Clause 4 (Scope of Services), subparagraph 3 5. The client shall pay the partner the monthly sum specified according to category in Appendix ... of this contract in respect of each member of the personnel furnished by the partner in each category. The client shall pay the said monthly sums in respect of the numbers and categories of the partner's listed in Appendix ... of this contract, only.				
PARTNER'S REMUNERATION N	8.1. The client shall further remunerate the partner in respect of the services in accordance with the conditions set forth in Appendix ... of this contract. 2. The reimburseable costs will become payable only on the submission by the partner of an invoice in their regard. 3. The partner's fee over and above the reimburseable costs, specified in Appendix ..., shall be payable in the amounts and at the times specified in the said Appendix. 4. Amounts due to the partner shall be paid promptly. If the client fails to pay the partner he/she shall be liable as hereinafter specified. 5. If any item or part of an item of an invoice furnished by the partner is disputed or subject to question by the client, the payment by the client of that part of the			8.1 Add.I The only costs reimburseable to the partner shall be those set out in Appendix ... of this contract. 8.5 Add.II The client may nominate a firm of accountants to audit all amounts claimed by the partner. Advance written notice must be given by the client or the firm of	Ex.I 8 Trade/GE.1/R.32 Add.I 8 ECE/145 Add.II 8 ECE/145

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	invoice which is not contested shall not be withheld on those grounds and the provisions of sub-paragraph 4 of Clause 11 (Client's Failure to Perform) shall apply to such a remainder and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the partner and interest at the rate specified in the said sub-paragraph 2 of Clause 11 shall be paid on all disputed amounts finally determined payable to the partner.			accountants of such audit; it shall be carried out during normal working hours at the place where the records are maintained.	
				8.Add.III The client shall be entitled to set off against any sums due by him/her to the partner, any amounts by way of reimbursements, damages or liquidated damages due from the partner to him/her.	Add.III 8 ECE/145
	6. Whenever it shall be necessary to evalue one currency in terms of another for the purpose of the payment of an amount to the partner, the rate of exchange applicable shall be the rate published by an official source in the client's country on the date the payment is due.				
PERFORMANCE SECURITY O	9. The partner shall furnish performance security to the client in the amount of ... The proceeds of the said security shall be payable to the client as compensation for any damage or loss resulting from the partner's failure to complete his/her obligations to the client under this contract but the said compensation will not be limited thereto. The performance security shall be denominated in the currency of this contract or in a freely convertible currency acceptable to the client and shall be in one of the following forms: - A bank guarantee or irrevocable Letter of Credit, issued by a bank and in a form acceptable to the client. - A cashier's cheque, certified cheque or cash. The performance security will be discharged by the client not later than days following the date of completion of the partner's obligations under this contract.	Should the client at any time have a proper claim against the partner for loss or damage resulting from the partner's failure to complete his obligations under this contract, the client shall be entitled to withhold payment of monies due from him/her to the partner under this contract up to the amount of the damages, including loss of profit or other loss and expenses, recoverable. The provisions of sub-paragraph 4 of Clause 11 shall apply to such a withheld sum to the extent that it shall subsequently be agreed or determined that no sum or a lesser sum than that withheld is due to the client from the partner. Before withholding any sum, the client shall give notice of his/her intention so to do to the partner and the partner shall have the right to reply to the said			Ex.I 9 ADB/I-ADB/WB Ex.II 9 Trade/GE.1/R.1

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		notice within ... days of his/her receipt thereof. Should the client without proper justification withhold any sum from the partner, the client shall be guilty of a breach of contract.			
WARRANTIES N	10. The partner warrants that: (a) Before the end of the period specified in Clause 4 sub-paragraph 3 the plant will be working in such a manner as to assemble and/or manufacture the agricultural machinery, equipment and other apparatus specified in Appendix... hereof in conformity with the specifications detailed in Appendix ... of this contract. (b) On the conclusion of this contract (in accordance with the terms hereof) the plant will be in such a condition as will enable, with due maintenance and repair, the continued manufacture of agricultural machinery as described at (a) above. (c) Before the end of the period specified in Clause 4 sub-paragraph 3 the works will be manufacturing agricultural machinery in conformity with, or in greater quantities than, the annual production figures specified in Appendix ... hereof. (d) On the due conclusion of this contract the works will be in such a condition as will enable them, with due maintenance and repair, to maintain the production level referred to at (c) above.				Ex.I 10 Trade/GE.1/R.32
FAILURE TO PERFORM N	11.1. Should either party fail to carry out his/her obligations under this contract then, in addition to the reliefs hereinafter provided, the other party may: -demand in writing that the party in breach comply with the terms of the contract, and, -if, within a reasonable time after receipt of such a demand the party in breach fails to take steps in good faith to comply with this contract, the other party may, without prejudice to the exercise of any other right or remedies available to him/her, terminate the contract by giving the party in breach written notice to that effect.				Ex.I 11.1 Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	2. (a) Should the partner delay in the performance of the services he/she shall be liable to pay to the client compensation and damages for any loss or damage suffered by the latter by reason of the delay.	11.2 (a) Should the partner delay in the performance of the services, the partner shall be liable to pay the client liquidated damages as hereinafter specified without any proof of loss or damage being adduced by the client.			Ex.I 11.2 ECE/ .5 Ex.II 11.2 Trade/GE.1/R.32 + ECE/145
	(b) Should the partner fail to perform some of the services or should the services be rendered in a defective manner the client may require the partner to complete the said services or to correct the said defective performance within a reasonable time of the partner's receipt of the written notification of default. If the unperformed services or defective services are impossible to remedy or if the partner fails to remedy them within a reasonable time of his/her receipt of the notification of default, he/she shall pay the client compensation and damages for any loss or damaged suffered by the client by reason thereof.	(b) Should the partner fail to perform some of the services or should the services be rendered in a defective manner the client may require the partner to complete the said services or to correct the said defective performance within a reasonable time of the partner's receipt of the written notification of default. If the unperformed services or defective services are impossible to remedy or if the partner fails to remedy them within a reasonable time of his/her receipt of the notification of default, he/she shall pay the client liquidated damages as hereinafter specified without any proof of loss or damage being adduced by the client.			- 11 -
	(c) Where the partner is liable to pay to the client compensation and damages for loss and damage suffered by the client by reason of the partner's default in the rendering of the services, such compensation and damages shall not exceed the damage which the partner could reasonably have forseen at the time of the formation of the contract. The client shall be under a duty to take all necessary measures to minimize the loss which has occurred provided that he/she can do so without unreasonable inconvenience or cost. Should he/she fail to do so, the partner may claim a reduction in the compensation and damages.	(c) If the partner fails to perform the services within the time periods allowed under this contract the client shall, without prejudice to his other remedies under this contract, deduct from the remuneration of the partner and any reimbursable costs and expenses, as liquidated damages, a sum equivalent to ... % of the partner's weekly remuneration for each week of delay until		11.1 (c) Notwithstanding anything herein contained to the contrary, the client shall indemnify and save harmless the partner for and against any and all claims, damages, expenses or costs (including those asserted by third parties) directly or indirectly related to the services to the extent that such claims, damages, expenses and costs exceed in total the partner's remuneration for the services (or ... % of the partner's total	Add. 11 Trade/GE.1/R.32 + FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		actual performance up to a maximum deduction of ... % of the total remuneration payable to the partner under this contract. Once the maximum has been reached, the client may consider termination of the contract. The "weekly remuneration" of the partner shall be calculated by dividing the total remuneration payable to him/her by the number of weeks provided by this contract for the performance of the services. If the partner fails to perform some of the services or should the services be rendered in a defective manner, the client shall, without prejudice to his/her other remedies under this contract, deduct from the remuneration of the partner and any reimburseable costs and expenses or claim against the partner, as liquidated damages: -in the case of unperformed services a sum of ... -in the case of services defectively rendered a sum of ...		remuneration). This indemnity shall not apply in cases where such claims, damages and expenses arise from gross negligence or criminal action by the partner or to any claims, damages or expenses arising out of the violation of legal provisions or rights of third parties in respect of patents and/or copyrights introduced into documents prepared by the partner.	- 12 -
	3. Should the client default in the performance of his/her obligations under this contract then: -any delay in the performance of the partner's obligations consequent upon such default of the client shall be deemed not the fault of the partner, and -the client will be liable to pay to the partner compensation for any loss or damage sustained by the partner by reason of the client's default.				Ex.I 11.3 ECE/145 + Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	4. Amounts due to the partner from the client shall be paid promptly in accordance with this contract. Should the client fail to pay to the partner any sum due under this contract within ... days of the due date the client shall pay interest at a rate of ... % per annum for each month or part of a month in which such payment is not made as and from the date of receipt of the invoice therefor. The partner may, by written notice to the client, terminate this agreement if he/she has not received payment of that part of any invoice which is not contested within ... days of the submission thereof. Such termination will not prejudice or affect the accrued rights, claims or liabilities of either party to this contract.				Ex.I 11.4 FIDIC
LIMITATION OF PARTNER'S LIABILITY R	12.1. The partner is not liable for any part of the works which are not under his/her responsibility save in so far as any loss or damage in respect thereof arises in consequence of decisions taken by the partner and/or directions given by him/her in the course of his/her performance of the services. 2. The partner is not liable for any loss or damage resulting from any act or omission of the client or any contractors engaged by the client which is not covered by the services to be performed by the partner or his/her instructions or advice.				
FORCE MAJEURE N	13.1. Neither party shall be liable for his/her failure to perform any of his/her obligations under this contract if such failure is due to an impediment beyond that party's control, occuring after the entry into force of the contract and which he/she could not reasonably have been expected to take into account at the time of the conclusion of this contract, or have avoided or overcome it or its consequences.	13.1 The partner shall promptly notify the client in writing of any situation or event arising from circumstances beyond his/her control and which he/she could not reasonably forsee and which makes it impossible for the partner to carry out in whole or in part his/her obligations under this contract. Upon the occurrence of such a situation or event the services shall be deemed to be postponed for a period equal to that caused by the force majeure and a reasonable period, not exceeding ... months to remobilize for the continuation of the services.			Ex.I 13 ECE/145 A/CONF.97/18 Ex.II 13 FIDIC + Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- he/she is exempt under sub-paragraph 1 of this Clause, and - the person whom he/she has so engaged would be so exempt if the provisions of that sub-paragraph were applied to him/her. 4. Upon the occurence of such an impediment the performance of the parties' obligations under this contract shall be deemed postponed for a period equal to that caused by the force majeure and a reasonable period, not exceeding ... month(s) to remobilize for a continuation of the parties' obligations under this contract. 5. Should the performance of either party's obligations under this contract have been postponed under this Clause for a period in excess of ... months, either party may terminate this contract by giving written notification thereof to the other party. Such termination will not prejudice or affect the rights, claims or liabilities of either party occrued up to the time of the occurrence of the impediment.				- 14 -
CHANGED CIRCUM-STANCES R	14. 1. Should circumstances arise which call for modifications of this contract these may be made by mutual consent, given in writing. Proposals in this respect from one party shall be given due consideration by the other party. 2. If in the country in which the project is being carried out there should occur, subsequent to the date of this contract changes to any national or state statute, ordinance, decree or other law or any regulation or bye - law which causes additional or decreased cost to the partner in the performance of his/her services, such additional or reduced cost shall be borne or credited to the client and the agreed remuneration adjusted accordingly.				Ex.I 14 Trade/GE.1/R.32 + FIDIC
INSURANCE R	15. The partner will obtain and maintain, from the date of commencement of the services, at his/her own expense, insurance in respect of the following: (a) professional insurance covering his/her own work (b) insurance against loss of or damage to the equipment used in the execution of his/her duties	15. Unless notice is given in writing to the contrary by the client, the partner shall, at the client's expense, take out and maintain on terms and conditions approved by the client, insurance against third party liability and against loss or damage in the execution of the services, provided that			Ex.I 15 ECE/145 Trade/GE.1/R.32 Ex.II 15 FIDIC

READINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		The partner may, by written notice to the client, terminate this contract if the services have been postponed pursuant to this subparagraph for a period in excess of ... months.			
	2. The party invoking this Clause must promptly notify the other party in writing of the impediment, its affect on his/her ability to perform and of its cessation. If such notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he/she is liable for damages resulting from such non-receipt in accordance with this contract.	13.2. Should the partner be an indvidual person and, for any reasons beyond his/her control and which he/she could not reasonably have forseen and for which he/she is not responsible, be unable to perform his/her obligations under this contract, or have it performed entirely, this contract will terminate without prejudice to the accrued rights of either party against the other. The client shall in that case pay the partner or his/her successors and assigns upon the surrender of the documents necessary for the continuation of the services, in so far as they are available, such part of the remuneration as corresponds to the state of the services under this contract, including any reimbursable costs and those termination costs (if any) becoming due to the partner or his/her successors and assigns from contracts already entered into in respect of this contract.			
	3. If the party's failure is due to the failure by a third party whom he/she has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:				

HEADIN	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	(c) insurance covering sickness or industrial accidents affecting the personnel (d) third party liability insurance, including the client and any employee of the client for damage due to death, personal injur , or property damage resulting from the performance of the contract.	the partner shall use his/her best efforts to maintain at his/her own cost, reasonable professional liability cover.			
ASSIGN O	16. The partner shall not, without the written consent of the client, assign the benefits, other than the assignment of any monies due or to become due, under this contract. The partner shall not, without the written consent of the client, in any way assign or transfer the obligations under this contract or any part thereof.				Ex.I 16 FIDIC
SUB-CONTRA O	17. Any sub-contract or modification or termination thereof relating to the performance of the services by the partner shall be made only with the advance written agreement of the client.				
SECREC	18.1. Both the client and the partner are precluded from revealing confidential information. "Confidential informat ¬" includes all facts relating to the subject of the contract, except those facts which are generally known or required to be revealed to enable the services to be carried out. The parties shall bind to secrecy all persons concerned with the execution of the works, including their respective employees. A violation of the said confendentiality will be deemed a breach of contract. This Clause will not bind the partner to the extent that other provision in this regard is made elsewhere in this contract. 2. The copyright of documents prepared by the partner from the client pursuant to this contract shall rest in the client. In all other cases the copyright in documents shall vest in the party who has prepared the same.				

HEAD	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
ADDI AL PROV FOR - NATI D SUSP N O	19.1. In addition to the circumstances hereinbefore specified wherein this contract may be terminated or performance of the services suspended by one or other of the parties, the client may, by written notice to the partner, give prior notice of his/her intention to abandon the services, in whole or in part, or to terminate this contract. The effective date of such termination of this contract shall not be less than ... days after receipt of such notice, or such other shorter or longer period as may be agreed between the parties. Upon receipt of such notice the partner shall take immediate steps to bring the services to a close and to reduce expenditure to a minimum. 2. Upon the postponement of the services or termination of this contract under the provisions in that regard contained in this contract and subject to the partner's obligation to reduce expenditure to a minimum as stated in the preceeding sub-paragraph, the partner shall be entitled to receive the remuneration due up to the effective date of postponement or termination and reimbursement in full for such costs reimbursable to him/her under this contract and legitimately incurred prior to the effective date of such postponement or termination and for all costs incidental to the orderly termination of the services, including return travel of the partner's personnel, their dependents and effects. 3. Termination of this contract, for whatever reason, shall not prejudice or affect the accrued rights or claims and liabilities of either party to this contract. 4. Upon the payment to the partner of the sums due to him/her on the termination of this contract, for whatever reason, the partner will deliver to the client all completed drawings, specifications and other documents relevant to the services and the project to which the latter are addressed that are in his/her possession.				Ex.I 19. FIDIC +3 Trade/GE.1/R.32 Ex.I 19.4 ECE/145
END HE CON R	20.1. This contract shall expire, as circumstances may direct, either: -on the date of completion of the parties' respective obligations under this contract, or -on the termination of this contract pursuant to the provisions of this contract.				Ex.I 20 ECE/145 + Trade/GE.1/R.32

INGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	2. The partner's obligations shall be deemed completed when the works have, for a period of ... months, operated in the manner herein warranted. The client's obligations shall be deemed completed when all the payments properly due to the partner have been made by the client. 3. The termination or expiry of this contract shall not prejudice or affect the rights or claims and liabilities of either party.				
US O	21. Nothing contained herein shall be construed as establishing or creating a relationship of master and servant or principal and agent save in respect of those matters wherein the parties' relationship is specifically stated to be of one or other kind.				Ex.I 21 FIDIC
UAGE R	22. This contract is drawn in both the .... language and the ... language. The ruling language of this contract is the ... language. All the documentation and information relating to the services and the project towards which the latter are directed, whether to be furnished by the client or the partner, shall be so furnished in the ... language. The training of the client's employees and all literature auxillary thereto shall be in the ... language. Any arbitration proceedings taking place under this contract shall be conducted in the ... language.				Ex.I 22 Trade/GE.1/R.32 + ECE/145
LICABLE NDARDS R	23. The technical standards to be used in the project to which the services are directed are the highest standards prevailing in the ... partner's country.	23. The technical standards to be used in the project to which the services are directed are the highest standards prevailing in the client's country. The client shall transmit to the partner copies of the standards and norms applicable in the client's country at the date of the commencement of the services. Further, the client shall keep the partner informed of any changes which may occur in the said standards and norms during the period in which the services are being carried out.			Ex.I+II ECE/145 + Trade/GE.1/R.

INGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
ICES O	24. All notices under this contract will be given in writing and will be deemed to have been given if delivered by one of the following means: -personal delivery to the designated representative of either party -by telex -by telegram -by registered post at the specific designation of the parties as set forth in Annex ... of this contract.				Ex.I 24 FIDIC
TTLEMENT DISPUTES	25.1. Should the parties' disagree over some technical matter then such a disagreement shall be submitted, without delay, to an expert appointed by ... for the purpose in order to obtain the opinion of the said expert on the said technical disagreement. If the parties are unable to reach agreement after a consideration of the opinion of the technical expert then the following provisions of this Clause shall apply in respect of the said disagreement. The opinion of the technical expert shall be admitted as evidence in any subsequent proceedings. The costs and expenses of obtaining the said opinion of the technical expert shall be borne equally by the parties.	25. Any dispute or difference airising out of this contract, including those considered as such by only one of the parties, shall be finally settled by arbitration in accordance with the provisions of the ... Arbitration Rules.			Ex.I 25 Trade/GE.1/R.32 + ECE/145
	2. Any dispute or difference arising out of this contract, including those considered as such by only one of the parties, shall be finally settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules. 3. The arbiter's decision shall be final and binding on both parties. The resulting award shall be in lieu of any other remedy. The arbiter will not be of the nationality of either the client or the partner.				Ex.I+II 25 FIDIC + Trade/GE.1/R.
APPLICABLE LAW N	26. The law of the client's country shall govern this contract in all respects and the contract shall be construed in accordance therewith.	26. The law of .... shall govern this contract in all respects and the contract shall be construed in accordance therewith.			

SOURCES:

Trade/GE.1/R.32	Guide on Drawing up International Contracts for Services Relating to Maintenance, Repair and Operation of Industrial and Other Works UN/ECE, 7 March 1984
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FIDIC	International Model Form of Agreement between Client and Consulting Engineer and International Rules of Agreement between Client and Consulting Engineer for Design and Supervision of Construction of Works. Federation Internationale des Ingenieurs-Conseils, IGRA, D+S 3rd Edition
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